No. 92-1956 (18)

Supreme Court, U.S.
FILED
NOV 26 1993
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In The

Supreme Court of the United States

October Term, 1993

CONSOLIDATED RAIL CORPORATION,

Petitioner,

v.

JAMES E. GOTTSHALL *and* ALAN CARLISLE,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

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JOINT APPENDIX

RALPH G. WELLINGTON*
NANCY WINKELMAN
BARRY L. REFSIN
SCHNADER, HARRISON, SEGAL & LEWIS
1600 Market St.,
Suite 3600
Philadelphia, PA 19103
(215) 751-2000
Counsel for Petitioner

WILLIAM L. MYERS, JR.*
G. SANDER DAVIS
G. SANDER DAVIS & ASSOCIATES
1601 Market St.
Suite 2330
Philadelphia, PA 19103
(215) 564-6262
Counsel for Respondent James E. Gottshall

J. MICHAEL FARRELL*
718 Arch St.
Suite 400N
Philadelphia, PA 19106
(215) 925-1105
Counsel for Respondent Alan Carlisle

**Counsel of Record*

Petition for Certiorari Filed June 9, 1993
Certiorari Granted October 12, 1993

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The following opinions, decisions, judgments, and orders have been omitted in printing this Joint Appendix because they appear on the following pages in the Appendix to Petitioner's printed Petition for a Writ of Certiorari:

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RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Date	Event
April 26, 1989	Complaint. Jury trial demanded.
June 6, 1989	Defendant's Answer.
December 31, 1990	Defendant's Motion for Summary Judgment, Memorandum of Law, and Certificate of Service.
January 30, 1991	Plaintiff's Memorandum of Law in Opposition to Motion for Summary Judgment of Defendant with Appendix of Exhibits.
February 7, 1991	Defendant's Memorandum in Response to the Memorandum of Plaintiff in Opposition to Defendant's Motion for Summary Judgment.
February 12, 1991	Order setting oral argument on Defendant's Motion for Summary Judgment for 3/14/91 at 9:30 A.M. 2/13/91 entered and copies mailed.
February 15, 1991	Plaintiff's Reply to Defendant's Response to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.
April 17, 1991	Argument on Defendant's Motion for Summary Judgment.

Date	Event
October 1, 1991	Letter from John J. O'Brien, Jr., Esq., dated 4/19/91 re: letter memorandum concerning the Third Circuit's recent decision in *Outten v. National Railroad Passenger Corp.*, No. 90-1520.
October 1, 1991	Letter to Judge Ditter from D. Scott Morgan, Esq., dated 4/17/91 re: written comments on the *Outten* case.
October 1, 1991	Memorandum and Order that Defendant's Motion for Summary Judgment is Granted. Judgment is entered in favor of Defendant and against James E. Gottshall (signed by Judge J.W. Ditter Jr.). 10/2/91 entered and copies mailed.
October 1, 1991	Case closed.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Date	Event
October 29, 1991	Notice of Appeal filed by James E. Gottshall.
October 31, 1991	Civil case docketed.
December 10, 1991	Brief and Appendix on behalf of Appellant James E. Gottshall. Certificate of Service dated 12/10/91.
January 9, 1992	Brief on Behalf of Appellee Consolidated Rail. Certificate of Service dated 1/9/92.
May 7, 1992	Argued before Becker, Nygaard and Roth, Circuit Judges.

Date	Event
February 8, 1993	Opinion (Becker, Nygaard, Authoring Judge, and Roth, Circuit Judges) with a separate concurring and dissenting opinion by Judge Roth.
February 8, 1993	Judgment: Reversed and remanded to District Court. Costs taxed against appellee.
February 22, 1993	Petition by Appellee for rehearing in banc. Certificate of service dated 2/22/93.
March 11, 1993	Order (Sloviter, Chief Judge, Becker, Stapleton, Mansmann, Greenberg, Hutchinson, Scirica, Cowen, Nygaard, Authoring Judge, Alito, Roth and Lewis, Circuit Judges) denying petition for in banc rehearing by Appellee Consolidated Rail. Judges Greenberg and Hutchinson would grant rehearing in banc. Judge Roth would grant rehearing for the reasons set forth in her dissent.
March 19, 1993	Mandate issued. Record released.
May 20, 1993	Reported at 988 F.2d 355.
June 14, 1993	Notice from Supreme Court of United States advising of petition for writ of certiorari filed by Appellee Consolidated Rail on 6/9/93 at Supreme Court number 92-1956.
October 18, 1993	United States Supreme Court order dated 10/12/93 at Supreme Court number 92-1956, granting petition for writ of certiorari by Appellee Consolidated Rail in Court of Appeals number 91-1926.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES E. GOTTSHALL	:	CIVIL ACTION
vs.	:	NO. 89-3102
CONSOLIDATED RAIL CORPORATION	:	JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff James E. Gottshall is a citizen and resident of the Commonwealth of Pennsylvania.

2. The Defendant, Consolidated Rail Corporation (Conrail), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a place of business at Six Penn Center Plaza, Philadelphia, Pennsylvania.

3. Plaintiff's cause of action arises under the Act of Congress of April 22, 1908, 35 Stat. 65, Chapter 149, and amendments thereto, commonly known as the Federal Employers' Liability Act, 45 U.S.C. 51 *et seq.*

4. The Defendant was, at the time of the injury hereafter alleged, and is now doing business within the jurisdiction of this Court as an interstate common carrier of freight for hire by rail into and from the various States of the Union and the District of Columbia.

5. At the time of the accident and the injuries hereinafter alleged, Plaintiff was employed by the Defendant as a maintenance of way machine operator and was engaged in work in furtherance of interstate commerce.

6. On or about August 10, 1988, at or near Watsontown, Pennsylvania, Plaintiff was injured when he was required to work extensive overtime under extremely hot weather conditions, coupled with the death on the job of a fellow employee.

7. The accident was caused by the Defendant's violation of the above Act in that the Defendant failed to provide the Plaintiff with a reasonably safe place to work.

8. As a result of the Defendant's violation of the above Act, Plaintiff sustained emotional injury, including post traumatic stress disorder.

9. As a further result of the Defendant's violation of the above Act, Plaintiff has in the past and will in the future incur substantial medical expenses, and he has in the past and will in the future suffer a severe loss of earnings and an impairment of his earning capacity.

10. As a further result of the Defendant's violation of the above Act, Plaintiff has in the past and will in the future suffer great pain and suffering, mental anguish and other losses to his great mental, physical and financial harm.

WHEREFORE, Plaintiff demands judgment against the Defendant in an amount in excess of Seventy-Five Thousand Dollars (75,000.00) plus interest and costs.

G. SANDER DAVIS AND
ASSOCIATES

BY: /s/ _____
G. SANDER DAVIS
JOHN J. O'BRIEN, JR.
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES E. GOTTSHALL	:	CIVIL ACTION
vs.	:	NO. 89-3102
CONSOLIDATED RAIL CORPORATION	:	JURY TRIAL DEMANDED

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

1. Admitted.

2. Admitted.

3. Defendant is advised that the allegations contained in Paragraph 3 of the plaintiff's Complaint are conclusions of law which require no answer.

4. Admitted.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

SECOND DEFENSE

Any injuries sustained by plaintiff, as set forth in the Complaint, were caused in whole or in part by his own negligence.

THIRD DEFENSE

Plaintiff's complaint fails to state a claim for which relief can be granted under the terms of the Federal Employers' Liability Act.

FOURTH DEFENSE

Plaintiff's complaint fails to state a claim for which relief can be granted.

FIFTH DEFENSE

This court lacks jurisdiction of the subject matter of plaintiff's claim.

SIXTH DEFENSE

Plaintiff's exclusive remedy for the claim stated is under the Railroad Labor Act, 45 U.S.C. Sec. 151 *et seq.*, for which no action lies in this court.

SEVENTH DEFENSE

Plaintiff's claim is barred by the applicable statute of limitations.

/s/ _____
STANLEY S. FRAZEE, JR.
Attorney for Defendant,
CONSOLIDATED RAIL
CORPORATION

1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-4987

DATED: June 6, 1989

Carlisle v. Consolidated Rail Corporation

RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Date	Event
November 16, 1988	Complaint. Jury trial demanded.
December 9, 1988	Answer.
September 25, 1989	Defendant's Motion for Summary Judgment, Memorandum of Law, and Certificate of Service.
October 4, 1989	Order that the time within which plaintiff is to respond to Defendant's Motion for Summary Judgment is extended until 11/6/89 (signed by Judge Robert S. Gawthrop III). 10/5/89 entered and copies mailed.
November 6, 1989	Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment and Certificate of Service.
May 7, 1990	Defendant's Supplemental Memorandum in Support of Defendant's Motion for Summary Judgment.
May 11, 1990	Argument of Defendant's Motion for Summary Judgment. Motion taken under advisement.

Date	Event
July 31, 1990	Memorandum and Order that Defendant's Motion for Summary Judgment is denied (signed by Judge Robert S. Gawthrop III). 7/31/90 entered and copies mailed.
August 13, 1990	Defendant's Motion for Reconsideration to Alter or Amend Judgment, Memorandum of Law, and Certificate of Service.
August 20, 1990	Order that Defendant's Motion for Reconsideration is granted. Order that this Court's Order of July 23, 1990 is hereby reaffirmed. Case shall be placed in the trial pool on Monday, November 5, 1990, to be called for trial upon 24 hours telephone notice (signed by Judge Robert S. Gawthrop). 8/21/90 entered and copies mailed.
August 23, 1990	Plaintiff's Brief in Opposition to Defendant's Motion to Reconsider.
October 5, 1990	Oral argument on 10/4/90 re: Defendant's oral motion to stay proceedings and Defendant's motion for reconsideration of court's summary judgment ruling.
October 5, 1990	Defendant's Motion to Vacate Judgment Pursuant to F.R.C.P. 60(b)(5) or (6) and Motion to Stay Proceedings During Pendency of Ruling on Said Motion Pursuant to F.R.C.P. 62(b), Memorandum of Law, and Certificate of Service.

Date	Event
October 15, 1990	Plaintiff's Answer to Defendant's Motion to Vacate and Motion to Stay, Brief, and Certificate of Service.
October 24, 1990	Defendant's Reply Memorandum of Law to Plaintiff's Brief in Opposition to Vacate Judgment Under F.R.C.P. 60(b) and Certificate of Service.
November 14, 1990	Order that Defendant's Motion to Vacate Judgment is denied and that this Court's Order of July 27, 1990 is hereby reaffirmed (signed by Judge Robert S. Gawthrop III). 11/15/90 entered and copies mailed.
November 15, 1990	Defendant's Pretrial Memorandum filed.
December 12, 1990	Defendant's Motion for Continuance of Trial and Certificate of Service.
December 18, 1990	Order that Defendant's Motion for Continuance of Trial is granted and that the Defendant shall transfer a letter to the court regarding the status of Mr. Turek and his ability to participate in the proceedings in the action forthwith. This case shall be placed in the trial pool on January 28, 1991, to be called for trial upon 24 hours telephone notice (signed by Judge Robert S. Gawthrop III). 12/19/90 entered and copies mailed.

Date	Event
February 5, 1991	Case called to trial. Twenty-nine jurors of panel present. Motions in limine and motion to continue case due to unavailability of essential witness argued. Court continues case to Monday, May 13, 1991. Jurors dismissed. Counsel argue motions re: Medical records of certain witness.
May 6, 1991	Motion by Defendant Consolidated Rail to vacate judgment order pursuant to F.R.C.P. 60(b)(5) or (6) due to change or clarification of law, Memorandum of Law, and Certificate of Service.
May 10, 1991	Supplement to Defendant Consolidated Rail's Pretrial Memorandum filed.
May 14, 1991	Order that Plaintiff's Motion to Compel Production of Defendant's medical-psychiatric records of Mr. Bruce Turek is granted; plaintiff's motion in limine to bar the introduction of evidence as to sick pay benefits received by Mr. Carlisle is granted; plaintiff's motion in limine to bar the introduction of evidence that Mr. Carlisle assumed the risk of his employment is granted (signed by Judge Robert S. Gawthrop III). 5/15/91 entered and copies mailed.

Date	Event
May 15, 1991	Civil Jury Trial. Day One (5/14/91); jury selection; jurors called and voir dired; 8 jurors selected and sworn; opening statements of counsel; Plaintiff's case; Alan Carlisle, called and sworn.
May 16, 1991	Civil Jury Trial. Day Two (5/15/91); Juror #53, Robert Ewart, dismissed from further service; plaintiff's case continued, etc.
May 17, 1991	Civil Jury Trial. Day Three (5/16/91); trial resumes; Plaintiff's case continues.
May 20, 1991	Civil Jury Trial. Day Four (5/17/91); Plaintiff's case continued; Plaintiff rests; Defendant's case; Defendant's witnesses called and sworn.
May 21, 1991	Civil Jury Trial. Day Five (5/20/91); Defendant's witnesses called and sworn; Defendant rests; charge conference; closing arguments; court's charge to the jury; jury retires to deliberate; jury question submitted to the Court; jury's request to be released for the day, and to resume deliberations on 5/21/91 granted.

Date	Event
May 21, 1991	Civil Jury Trial. Day Six (5/21/91); deliberations resume; jury question answered by the Court; verdict reached; jury finds in favor of the Plaintiff, Alan Carlisle, and against the Defendant, Consolidated Rail, and assesses damages in the amount of $386,500; jury polled; verdict recorded; jury dismissed from further service.
May 21, 1991	Verdict sheet and answers thereto for.
May 21, 1991	Order that Judgment is entered for Alan Carlisle against Consolidated Rail for $386,500 (signed by Judge Robert S. Gawthrop III). 5/22/91 entered and copies mailed.
May 21, 1991	Case closed.
June 3, 1991	Motion by Defendant Consolidated Rail for Judgment Notwithstanding the Verdict, or in the Alternative for a New Trial, Memorandum of Law, and Certificate of Service.
June 17, 1991	Memorandum of Law by Plaintiff Alan Carlisle in opposition to Motion for Judgment Notwithstanding the Verdict, Motion for a New Trial.
March 25, 1992	Memorandum and Order denying Defendant Consolidated Rail's Motion for Judgment Notwithstanding the verdict and motion for new trial (signed by Judge Robert S. Gawthrop III). 3/25/92 entered and copies mailed.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Date	Event
April 1, 1992	Notice of Appeal filed by Consolidated Rail.
April 6, 1992	Civil case docketed.
May 18, 1992	Brief and Appendix on behalf of Appellant Consolidated Rail. Certificate of Service dated 5/18/92.
June 17, 1992	Brief on behalf of Appellee Alan Carlisle. Certificate of Service dated 6/17/92.
June 25, 1992	Reply Brief on behalf of Appellant Consolidated Rail. Certificate of Service dated 6/25/92.
September 21, 1992	Argued before Mansmann, Roth, Circuit Judges, and Restani, U.S. Court of International Trade.
March 29, 1993	Opinion (Mansmann, Roth, Authoring Judge, Circuit Judges, and Restani, U.S. Court of International Trade).
March 29, 1993	Judgment: Affirmed. Costs taxed against appellant.
April 20, 1993	Mandate issued. Record released.
June 11, 1993	Reported at 990 F.2d 90.
October 18, 1993	U.S. Supreme Court order dated 10/12/93 at Supreme Court number 92-1956, granting petition for writ of certiorari by Appellant Consolidated Rail in Court of Appeals number 91-1926.

J. MICHAEL FARRELL, ESQUIRE
I.D. NO.: 33803
1420-22 Chestnut Street
8th Floor
Philadelphia, PA 19102 Attorney for Plaintiff
(215) 569-9433

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN CARLISLE, Plaintiff	:	NO. 88-8752
vs.	:	CIVIL ACTION
CONSOLIDATED RAIL CORPORATION	:	JURY TRIAL DEMANDED
Defendant	:	

1. This suit is brought pursuant to an Act of Congress known as the Federal Employer's Liability Act, Title 45 U.S.C.A. Section 51 et seq.

2. At all times material hereto, the defendant, CONSOLIDATED RAIL CORPORATION, was engaged in interstate commerce as a common carrier by railroad operating lines and a system of railroads in the Commonwealth of Pennsylvania and other states of the United States.

3. On or about August 14, 1988, the plaintiff, while the agent, servant, workmen and/or employee of the defendant and while acting within the scope of his employment engaged in the furtherance of interstate commerce or in work directly, closely or substantially affecting interstate commerce within the meaning of the

Federal Employers Liability Act, Title 45 U.S.C.A. Section 51 et seq., was working at Philadelphia, Pa., when he was injured due to unsafe and inadequate working conditions.

4. At the time and place hereinafter mentioned, the acts of omission and commission causing injuries to the Plaintiff were done by the defendant, their servants, agents and/or employees acting in the course and scope of their employment with and under the direct and exclusive control of the defendant.

5. All the property, equipment and operations involved in this accident hereinafter referred to were owned and/or under the direct and exclusive control of the defendant, their agents, servants and/or employees.

6. The aforesaid accident was due solely to the negligence, carelessness and recklessness of the defendant and its agents, servants, workmen and/or employees, acting within the scope of their employment, which negligence consisted of the following:

(a) failure to provide the plaintiff with a safe place to work as required by Title 45 U.S.C.A. Section 51 et seq.;

(b) failure to comply with safety rules and regulations of the defendant;

(c) failure to comply with the operating rules and regulations of the defendant;

(d) negligence of the defendant's agents, servants, workmen and/or employees;

(e) negligence at law; and

(f) otherwise failing to exercise due and adequate care under the circumstances.

7. As a direct result of the defendant's negligence, through its agents, servants, workmen and/or employees, the plaintiff suffered severe emotional, psychological and physical breakdown to include but not be limited to severe chest pain, dizziness, blackouts and major depression.

8. As a direct result of the defendant's negligence, through its agents, servants, workmen and/or employees, the plaintiff has been unable to attend to his usual duties and occupations, all of which caused substantial financial loss and all of which may and probably will continue in the future.

WHEREFORE, the plaintiff demands judgment against the defendant in an amount in excess of Seventy-Five Thousand ($75,000.00) Dollars.

JURY TRIAL DEMAND

A trial by jury is hereby demanded.

/s/ _____
J. MICHAEL FARRELL,
ESQUIRE

Dated: November 11, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN CARLISLE	:	CIVIL ACTION
vs.	:	NO. 88-8752
CONSOLIDATED RAIL CORPORATION	:	

ANSWER TO PLAINTIFF'S COMPLAINT

1. This paragraph states a conclusion of law; no answer is required.

2. Admitted.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

This court lacks subject matter jurisdiction of this action.

THIRD DEFENSE

If plaintiff was injured as alleged, which is denied by defendant, then said injuries were solely and exclusively a result of plaintiff's negligence.

WHEREFORE, defendant denies that it is liable to plaintiff.

/s/ _____
STUART A. SCHWARTZ, ESQUIRE
Attorney for Defendant

CONSOLIDATED RAIL CORPORATION
1138 Six Penn Center Plaza
Philadelphia, PA 19104
(215) 977-4998

DATED: December 9, 1988